

The WTO beyond Doha: thinking ahead

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Charting a future course for the WTO at a time when its membership appears as mired as ever in the many intractable challenges put up by the Doha Development Agenda is a decidedly daunting task. Yet it's one that I have agreed take up for the price of a (first class) train ticket between Berne and Paris! It gives me great pleasure to be back at the ICC to address its Commission on Trade and Investment Policy and to advance some thoughts on what might lie ahead for the multilateral trading system.

Let me start by stating the obvious, counterfactual, claim: **the costs of non-Doha, both direct and indirect, and in both the short and longer term, need to be borne in mind.** The direct short-term hit from non-Doha may well be more symbolic than real, the World Bank and many leading academics having in recent years greatly reduced the scale of the direct economic benefits of what is on the table, arguing in some cases that a completed DDA would contribute a mere few weeks of extra growth to the world economy.

Yet any such calculations can be greatly misleading. For one, they often tend to be static in character, when trade diplomacy typically deploys its beneficial effects dynamically over time as negotiated commitments and agreed rules are phased-in. So **we should show greater concern over the likely indirect, and longer-term, costs of non-Doha.** These include: the **loss of economic confidence** that failure of essence entails, doubtless of greater salience at a time of still tepid economic recovery in many countries; **evidence of the further breakdown of multilateralism** (on the heels of a mostly disappointing outcome on climate change at Copenhagen); **a failure to deliver on the promise of a development round** (compounding the failure to honour successive G-8 aid pledges); **a further ebbing of the WTO's authority**, feeding in turn the **greater temptation** (and observed greater marginal propensity) **towards non-compliance by key members.**

By almost any standards, and certainly by the trading system's historical standards, **what is on the table today is far from trivial**, with the possible – and yet altogether not surprising - exception of services, the weakest leg in the DDA's market access trinity.

Yet the Round's difficult conclusion coincides with an equally challenging global transition towards a multi-polar world, with an "old" trade aristocracy somewhat in denial over its diminished giant status and a considerably younger "emerging" bourgeoisie not yet willing to fully assume the obligations that come with its newfound might. Yet, with voice comes responsibility!

In my 25 years in the trade business, **I do not recall a moment when the multilateral trading system suffered from such a degree of benign indifference**. Much ink has been spilled bemoaning the relative apathy (relative to the Uruguay Round) of global business towards the WTO and the DDA's fate (from an ICC perspective, this is undoubtedly an unfair accusation even as the perception is firmly rooted in the DDA narrative). Today even anti-global NGOs are having a hard time mobilizing their troops over the putative ills that the process of WTO negotiations is about to spread on an MFN basis! We have reached such a low point that the mere fact that the United States, still today the WTO's pre-eminent member, has mercifully found time to appoint an ambassador in Geneva, is hailed as a triumph and a sign of distinct re-engagement...

Yet move forward we must, not least because the world of trade and investment is ever changing, with new patterns of trade and investment integration emerging, new voices needing to be heard, new responsibilities assumed, new negotiating challenges addressed, and the increasing - and often paradoxical - gulf between preferential advances and multilateral stasis in need of being confronted.

The WTO is a three-dimensional animal, with executive, legislative and judiciary functions. **The problem today is that the WTO hangs by the thread of its judiciary, arguably its component with the weakest political legitimacy. Both its executive (decision-making) and legislative (negotiating) functions have ceased to work properly.** This fuels the apathy of its main cheerleaders and reinforces the shift towards preferential agreements, all the more so as today's diminished multilateral giants still yield considerable power in bilateral configurations.

It matters that the WTO's tripods all be reinforced. A system that delivers on only one of its core mandates and increasingly assigns to dispute settlement (and thus to unelected judges and, in many instances, non-expert first instance panellists) that which its Members cannot reach agreement on at the negotiating table, is a system that is likely more fragile than many are prepared to admit.

Looking forward, **the above diagnosis raises three main challenges that need to be met** if the WTO system and the values of mutually beneficial cooperation and multilateralism in trade governance are to regain their lost lustre:

First is the absolute necessity of bringing the Doha Round to a swift and satisfactory conclusion. This can only come with some inevitable swallowing of pride and reduced (but perhaps tactically excessive?) expectations on the part of some important members. To progress and chart a future path, a solid foundation is needed, one that ensures greater adequacy between the world economy we live in and the trade rules we abide by. Such a foundation has to be WTO 2010 or 2011 and not GATT 1994, which is what non-Doha would entail.

Second is the equally pressing need to consider constitutional changes in the WTO's governance structure and *modus operandi* so as to allow greater flexibility in decision-making, agenda-setting and the very conduct of negotiations. Simply put, the time has come to reconsider the pros and cons of the Single Undertaking. Conceived at the end of the Uruguay Round by the Quad countries as an anti free-riding political straightjacket to ensure full compliance by all Members with the Round's broad outcome, **the Single Undertaking has today become one of the most powerful sources of collective inertia in the system**, providing an effective veto to all members and a ready-made excuse to foot drag for many. A sad but symptomatic case in point was provided at the last WTO Ministerial meeting, held in Geneva at the end of 2009, when determined "Bolivarian" opposition (from Members collectively accounting for less than one half of one percent of world trade) managed to jettison any meaningful discussion of a number of reasonable proposals on structural reform issues. The sad and equally symbolic demise of the Singapore Issues at the WTO's Cancun Ministerial in 2003 offers another example of the tyranny of the Single Undertaking, even if some responsibility for the debacle also lies with some of the protagonists, particularly the EU.

Far from suffering from a democratic deficit, the WTO is arguably afflicted by an excessive democratic surplus!! Ways must thus be found to **embed greater doses of variable geometry in - and critical mass approaches to - the way in which decisions are taken, agendas set, negotiations conducted and agreements reached.** On many rule-making issues – take trade and competition or trade facilitation for instance, the risk of free-riding on MFN-brokered outcomes is arguably non-existent. Critical mass or full MFN approaches can and should thus be envisaged in such instances. Where market access issues are more prominent – think services or investment for example, there would appear to be some legitimacy to the belief that non-participating members

should abstain from claiming or be rewarded with MFN benefits. In such instances, MFN-constrained plurilateralism should define the norm, with non-members always free to join the club at a later date.

The WTO should thus aim to become what Harvard's Robert Lawrence once dubbed "a club of clubs" in regard to new rule-making or market opening compacts. The Organization's increasing diversity – and the overwhelming influence that developing countries can be expected to wield in future given their share of its membership - which is set to grow as pending accessions proceed – makes the quest for greater flexibility all the more justified and necessary.

The need to tackle new issues and revisit some slightly older new issues forms the third leg of any serious attempt at charting a future course for the organization. There is certainly no shortage of possible candidates, starting with the "old" new issues of **investment and competition**, which were taken off the DDA radar screen for all the wrong reasons and whose links to trade in a globally integrated world economy should be clear to all.

Questions ICC members should be debating in this regard include the following:

Why would most preferential trade agreements (PTAs) mark significant advances in rule-making, market opening and dispute mediation in these areas while the WTO continues to watch the parade go by?

Does the business community not see compelling economies of scale in rule-making through a one-stop shop solution? The spaghetti bowl of overlapping

rules and treaties is even more pronounced in investment matters than it is in the trade field.

Would multilaterally brokered outcomes in these areas necessarily entail a dilution of domestic or bilaterally-agreed rules, as many sceptics have long argued?

Has the proliferation of PTA rule-making in both areas not led to a progressive convergence in substantive and procedural platforms such that Geneva migration might today be envisaged, all the more so on a variable geometry or critical mass basis?

Among the set of issues that will also need to command greater attention in trade circles is that of **climate change and mitigation and its trade consequences**. This challenge will of essence entail some serious (re-)negotiations on matters relating to the whole arsenal of contingent protection measures in ways that are difficult to predict given the political stakes at play and the rising ascendancy of environmental considerations in the hierarchy of economic policy making.

Another pressing issue is that of **digital trade**, on which the Uruguay Round was silent and where WTO rules remain grossly inadequate given the business interests at stake. This is yet again **an area where PTAs have raced ahead in a manner that has informed – and should thus facilitate - multilateral rule-making**.

The **complex controversies lying at the interface of trade and labour – both labour standards and trade-related labour mobility** - form yet another challenge that WTO Members will need to address. The Stolper-Samuelson theorem, which alerted us to the

fact that a country's scarce factor of production (labour in OECD countries, capital in most developing countries) tends to incur the steepest costs from trade opening, still has legs! Indeed the outsourcing revolution has clearly given it new life as concerns over the redistributive impacts of freer trade, which now extend to white collar workers in the service industries of advanced industrial economies have become real as the labour market for skills becomes truly global in character. These concerns will likely need to find some expression in trade diplomacy. Better that be in the WTO than in asymmetrical North-South PTAs.

Addressing the challenge of labour mobility will likely prove no easier, and many would argue that migration-related matters are best left to bilateral confines, including non-trade ones. While true in some regards, this would still be short-changing the enormous potential this issue carries. There is much WTO negotiations can deliver by devising win-win scenarios on trade-related labour mobility involving more active cooperation between sending and receiving governments, their trade and migration-labour market officials, as well as the private sector. This must be done as the world economy and globally active firms contend with both acute shortages of labour all across the skills spectrum and pronounced demographic transitions in many parts of the world. The voice of the ICC and its members should carry with greater resolve on this front.

A further issue that is certain to warrant closer trade scrutiny in the coming years, in ways that will once again make clear the close links between trade, FDI and competition law, is the issue of **cross-border trade and investment in natural resources** (agriculture and extractive industries, including the oil and gas sector). The recent spate of concerns over export restrictions in agriculture and mining, the race for resources, the clear potential of extra-territorial anti-competitive effects of commodity arrangements, the

rise of economic patriotism in strategic natural resource sectors, have revealed clear gaps in international rule-making in need of concerted collective action aimed at keeping markets open, and safeguarding consumer interests.

The current debate over the ripple effects (including on other emerging nations' trade) of the trade and investment distortions stemming from alleged **currency manipulation** is certain to translate into calls for greater WTO activism. Indeed, it already has on the part of prominent experts and pundits. My own view is that **great caution should be exercised in this latter regard**. This recalls the work of yet another Nobel Laureate in economics – the Dutch economist Jan Tinbergen and his “assignment problem” theorem. **Beware of undue mission creep in assigning to the WTO issues trade diplomacy may be ill-equipped to mediate in institutional or legitimacy terms**. The issue of currencies and global imbalances is one where finance ministries must maintain the lead, even as greater dialogue with their trade brethren needs to be institutionalized.

Many would argue that the above observation clearly also applies to the trade-environment or trade-labour debate. That may well be true. And that is why a serious debate over the proper remit of the WTO's rule-making boundaries must be had, and the sooner the better, with strong input and leadership from the ICC and its members.

A final point, perhaps a minor one, but one on which the ICC's voice can once again likely carry much resonance both in concluding the DDA and in looking ahead, concerns **the need for WTO members to show greater imagination in the conduct of negotiations, in building bridges between the GATT and GATS and in marketing such pro-development advances as legitimate expressions of the need to move**

beyond the artificial boundaries between goods and services inherited from the Uruguay Round.

A few simple examples come to mind on which useful, North-South bridging, coalitions of the willing could be assembled include:

- (i) Adding a DDA-brokered services component to the 1996 Information Technology Agreement (focusing on modes 1 and 4);
- (ii) Creating synergies – indeed a development-enhancing, supply-side enabling, bottleneck-removing package – between the GATT-centred discussions on trade facilitation (on which remarkable progress has been made in the DDA) and the broad universe of services that give operational, day to day, meaning to the very act of trading across borders. The DDA's GATS cluster on logistics services is a useful step in that direction, but the circle must be enlarged to include aspects of distribution services and elements of all transport modes (on which too little progress has been made despite its centrality to the

Thank you for your time and attention. I will be delighted to field your questions.